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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

KELLEY STURDIVANT,

Defendant and Appellant.

2d Crim. No. B290052
(Super. Ct. No. LA086614)
(Los Angeles County)

A jury convicted Kelley Sturdivant of pimping and pandering. (Pen. Code, §§ 266h, 266i.)¹ His pandering conviction is authorized by *People v. Zambia* (2011) 51 Cal.4th 965 (*Zambia*). Appellant argues that the Supreme Court “wrongly held” in *Zambia* that a defendant can be convicted of encouraging someone who is already a prostitute “to become a prostitute.” *Zambia* governs this appeal. We affirm.

¹ Unlabeled statutory references are to the Penal Code.

FACTS AND PROCEDURAL HISTORY

Charis Simmons is a vice officer for the Los Angeles Police Department. On August 14, 2017, she was posing as a prostitute on a street in the San Fernando Valley. She wore a microphone to record conversations.

Appellant approached and asked Simmons how she was doing. She said she was “a dancer . . . not from around here” who “was not doing very well because [she] didn’t know what [she] was doing.” Appellant replied that she was “doing it all wrong” and should try “the escort way, . . . the . . . bigger way of doing this.” He offered to help, saying he works with escorts “[i]n a big way” and is “an expert in advertising” on websites specializing in the sex trade.

Appellant stated that he is partners with a black woman named Kari who was in a nearby motel room engaging in prostitution.² He was happy that Simmons is white and pretty because she would earn more money than Kari. He discussed what he would charge Simmons for his management services, taking 50 percent of her income in return for his protection, advertising, scheduling sex acts, and providing lodging and clothing. Appellant said he only works with “real whores,” not “fake whores” who cheat customers.

Appellant assured Simmons that she could earn \$1000 per day as an escort. He showed her a list of regular clients and said, “I [will] multiply you in ad work just like a typical big agency

² Kari S. testified that appellant solicited her move from Nevada to Los Angeles to work as an escort; arranged acts of prostitution; set the price for her services; drove her to meet clients; and collected money from her. Her testimony formed the basis of appellant’s conviction for pimping.

does.” He described it as “the truest partnership you will ever find.” Near the end of their exchange appellant said, “I’ll truly teach you how to be a super high end escort.” He was then arrested.

Appellant was charged with pimping Kari S. and pandering Officer Simmons; it was further alleged that he has prior convictions for robbery and pimping. (§§ 211, 266h, subd. (a), 266i, subd. (a)(1), 667, subd. (d), 667.5, subd. (b), 1170.12, subd. (b).) Appellant acted in propria persona at trial. He waived his right to trial on the priors, admitting the robbery conviction under the Three Strikes law and the prior prison sentence for pimping. The jury found him guilty. The court sentenced him to 10 years, 4 months in prison, based on the mid-term of four years for pimping, doubled to eight years as a second strike, plus 16 consecutive months for pandering (one-third the middle term doubled as a second strike), plus one year for the prison prior.

DISCUSSION

Appellant claims instructional error. The jury was instructed that “the People must prove that: 1. The defendant used promises or any device or scheme to cause, persuade, encourage, or induce Ofc. Simmons to become a prostitute, although the defendant’s efforts need not have been successful. 2. The defendant intended to influence Ofc. Simmons to be a prostitute. It does not matter whether Ofc. Simmons was an undercover police officer. . . .” (CALCRIM No. 1151. Paragraph markings omitted.) Appellant did not object at trial to the instruction because objecting would have been “futile or wholly unsupported by substantive law.”

Appellant argues that the instruction misinterprets the pandering statute, section 266i, subdivision (a)(2).³ He contends that the jury was improperly instructed it could convict him for “encouraging a prostitute who was already acting as a prostitute.”

His reading of section 266i was rejected in *Zambia*. *Zambia* approached an undercover officer and offered to be her pimp: she would give him money and he would provide housing, clothing and protection. (*Zambia, supra*, 51 Cal.4th at pp. 970-971.) Like appellant, *Zambia* contended that encouraging someone “to become a prostitute” does not include . . . a person who is already a prostitute, or is posing as one.” (*Id.* at p. 972.)

The Supreme Court held that section 266i applies when the target of the defendant’s encouragement “is already an active prostitute, or [an] undercover police officer.” (*Zambia, supra*, 51 Cal.4th at p. 981.) The Court relied on a line of cases starting in 1973 to support its conclusion. (*Id.* at pp. 972-975, citing *People v. Bradshaw* (1973) 31 Cal.App.3d 421, 426 [defendant solicited a vice officer posing as a prostitute to change her business relations]; *People v. Hashimoto* (1976) 54 Cal.App.3d 862, 866-867 [defendant ran afoul of the legislative goal of discouraging efforts to increase the volume of a prostitute’s operation]; *People*

³ A person is guilty of pandering who “[b]y promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute.” (§ 266i, subd. (a)(2).) Though the jury was instructed with pandering by encouragement, appellant was charged with violating subdivision (a)(1) of section 266i, pandering by procuring a person for purposes of prostitution. He does not claim prejudice from the disconnection between the charge and the instruction.

v. Patton (1976) 63 Cal.App.3d 211, 218 [a substantial potential for social harm is inherent in the defendant’s act of encouraging an established prostitute to alter her business relations]; *People v. DeLoach* (1989) 207 Cal.App.3d 323.)⁴

The Court observed that the Legislature has amended section 266i six times since 1973 without altering the appellate courts’ interpretation, giving rise to a presumption that lawmakers acquiesce in the courts’ construction of the statute. (*Zambia, supra*, 51 Cal.4th at pp. 975-976. Accord: *Ryan v. Rosenfeld* (2017) 3 Cal.5th 124, 132-133 [“decades of legislative inaction” in response to settled judicial interpretation of a statute signal acquiescence].) Since *Zambia* was decided, additional appellate court cases followed its interpretation of section 266i, yet the Legislature has not amended the statute. (See *People v. Chatman* (2019) 30 Cal.App.5th 989, 995-996; *People v. Scally* (2015) 243 Cal.App.4th 285, 293; *People v. Leonard* (2014) 228 Cal.App.4th 465, 488.)

Settled law thus supports appellant’s conviction for pandering. He approached an undercover officer and criticized her unsuccessful business model of streetwalking. He advised her to become an escort, a “bigger way of doing this” in which he could “multiply [her] in ad work” and use his list of regular clients to increase sales of her sexual services. He promised to teach her “how to be a super high end escort,” taking half her income in return for providing lodging, clothing, protection, internet advertisement and arranging acts of prostitution.

⁴ The Court disapproved a decision that deviated from the cited cases, *People v. Wagner* (2009) 170 Cal.App.4th 499. (*Zambia, supra*, 51 Cal.4th at p. 981.)

Appellant increased the potential for social harm by seeking to expand prostitution with targeted methods. “[T]he protection provided by a pimp, in conjunction with the services he provides in advertising the prostitute’s services and encouraging her to engage in prostitution, promotes her business and influences her future conduct.” (*People v. Chatman, supra*, 30 Cal.App.5th at p. 995.) Appellant’s predatory behavior falls squarely within the statutory goals of section 266i identified in *Zambia*, which governs appellant’s case. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) We are unswayed by his reliance on two dissenting opinions in *Zambia*.

DISPOSITION

The judgment is affirmed.

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PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Gregory A. Dohi, Judge

Superior Court County of Los Angeles

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